CECIL RAJAH v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Wan Suleiman & Chang Min Tat F.JJ.) October 27 & December 8, 1980]

[Kuala Lumpur — Federal Court Criminal Application No. 8 of 1980]

Criminal Law and Procedure — Charge of corruption — Submission of false travelling claims — Acquittal in Sessions Court at end of prosecution case — Appeal by Public Prosecutor — Appeal allowed and defence ordered to be called — Application to refer questions of law for determination of Federal Court — Holding of view locus in quo — Principles and powers in appeal against order of acquittal — Application dismissed by High Court — Application to Federal Court — Case to continue before Sessions Court — Prevention of Corruption Act, 1961, s. 4(c) — Courts of Judicature Act, 1964, s. 66(1).

In this case the applicant had been charged under the Prevention of Corruption Act, 1961, with making false travelling claims with intent to deceive the Government. He was acquitted in the Sessions Court at the end of the prosecution case. The Public Prosecutor appealed and the learned judge of the High Court allowed the appeal and ordered that the defence be called. The applicant thereupon applied that certain questions of law of public interest raised in the appeal be reserved for the determination of the Federal Court. The questions related to the powers and principles applicable to a view of the *locus in quo* and to the principles and powers which govern the jurisdiction of the High Court to reverse the trial court where the acquittal is based on the credibility of witnesses. The learned judged dismissed the application and application was made to the Federal Court.

Held: in this case, the most convenient procedure would be that the order of the learned judge should be upheld, so that the case should continue before the Sessions Court.

Cases referred to:-

(1) *London General Omnibus Company Ltd.* v. *Lavell* [1901] 1 Ch. 135, 138.

(2) *Tameshwar* v. *The Queen* [1957] A.C. 476.

(3) *Karamat* v. *The Queen* [1956] A.C. 256.

(4) *Reg.* v. *Martin and Webb* (1872) L.R. 1 C.C.R. 378; 26 L.T. 778.

(5) *Buckingham* v. *Daily News Ltd.* [1956] 2 Q.B. 534.

FEDERAL COURT.

Edgar Joseph Jr. for the applicant.

Faidz bin Haji Mohamed Darus, (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): Mr. Cecil W.A. Rajah was the State Game Warden of Pahang stationed in Temerloh. He was charged in the Sessions Court, Kuantan, under section 4(c) of the Prevention of Corruption Act, 1961, with making false travelling claims in respect of four days in April, 1974, with intent to deceive the Government. The case for the prosecution was that these claims had been made in respect of journeys which in fact he had not made. On July 27, 1978, the learned President acquitted and discharged him at the end of the prosecution case, holding that no *prima facie* case had been made out against him which, if unrebutted, would warrant a conviction.

The learned Public Prosecutor appealed, and the learned appeal judge on May 16, 1980, allowed the appeal, set aside the order of acquittal and discharge, and ordered that the defence be called.

The defence has not yet been called and the trial concluded, for on June 9, 1980, the accused applied under section 66(1) of the Courts of Judicature Act, 1964, to the learned judge for an order that certain questions of law of public interest raised in the appeal be reserved for the determination of the Federal Court.

Apparently during the trial the learned President visited one of the scenes, accompanied by all concerned, and then returned to court. The accused's complaint relates to what the learned President did and did not do in reference to this visit, as can be seen from the questions posed on his behalf, which are as follows:

(a) In a Criminal Trial what are the powers, principles, functions and procedures that govern the holding of a view of the *locus in quo?* and/or,

(b) Whether a view coupled with demonstrations is part of the evidence so much so that it may of itself outweigh all the other evidence in the case so that the trial court can found its decision upon it without more? and/or,

(c) Whether or not Alverstone C.J. was correct in stating the law on the view of the *locus in quo* in *London General Omnibus Company Ltd.* v. *Lavell*[1] as follows: —

> "It is quite true that by rule 4 of Order L. it is provided that the judge may 'inspect any property or thing concerning which any question may arise' in the action; but I have never heard it said, and, speaking for myself, I should be very sorry to endorse the idea, that the judge is entitled to put a view in the place of evidence. A view, as I have always understood, is for the purpose of enabling the tribunal to understand the questions that are being raised, to follow the evidence, and to apply the evidence?"

and/or,

(d) In a criminal appeal to the High Court against an order of acquittal entered by a Subordinate Court, what are the principles and powers which govern the jurisdiction of the High Court to reverse the Trial Court where the acquittal is founded on the credibility of witnesses?

On August 11, 1980, the learned judge dismissed the application on the ground that no points of law of public interest are involved in the questions posed which needed a reference under section 66(1) of the Act. He said:

> "If there was any point of law raised therein, they were clearly in reference to the already known, accepted and established principles or one following the principles which had been laid down by the cases cited by the applicant himself. To allow such applications would merely, therefore, be opening the flood gates to having matters referred to the Federal Court which ordinarily the accused person would be prevented from doing in an appeal."

It should be observed that at this stage we are not concerned with the merit of the questions. All we are concerned with is whether or not we should allow the application that the questions be referred to us; and we should determine them only if we so allow, but the trial should continue before the learned President as ordered by the appeal judge if we do not so allow.

Mr. Edgar Joseph Jr. on behalf of the applicant referred us to *Tameshwar* v. *The Queen,*[2] *Karamat* v. *The Queen,*[3] *Reg.* v. *Martin and Webb,*[4] *London General Omnibus Company Ltd.* v. *Lavell*[1] and *Buckingham* v. *Daily News Ltd.*[5] on views by a trial judge.

We are of the opinion that in the circumstances of this case the most convenient procedure should be

followed, namely that we should uphold the learned judge's order dismissing the application, so that the case should continue before the President of the Sessions Court. Only after he has determined the case, after fully considering counsel's submission on the evidence and the law, and, if there is an appeal, after the learned High Court judge has given us the benefit of his views on all the points raised, will it be convenient for us to consider such points of law of public importance that may be referred to us by him under section 66(1).

This application is dismissed.

Application dismissed.

Solicitors: *Joseph & Son.*

R. KANDASAMY v. KEMPAS (MALAYA) BHD.

[F.C. (Suffian L.P., Wan Suleiman & Chang Min Tat F.J.J.) October 31 & December 12, 1980]

[Kuala Lumpur — Federal Court Civil Appeal No. 109 of 1979]

Industrial Law — Dismissal of workman — Reference by Minister to Industrial Court — Wrong section cited in reference — Whether affects jurisdiction — Industrial Relations Act, 1967, ss. 16A (repealed) & 26.

Administrative Law — Application for certiorari — Award of Industrial Court — Reference by Minister citing wrong section of Act — Whether affects jurisdiction — Industrial Relations Act, 1967, ss. 16A (repealed) & 26.

In this case the appellant had been dismissed by the respondent company and on reference by the Minister to the Industrial Court, the Industrial Court ordered that he be reinstated. The respondent did not reinstate him but applied for an order of *certiorari* to quash the award of the Industrial Court. At the hearing before the High Court, a preliminary point was raised that in the reference by the Minister, the wrong section was cited, as section 16A had been repealed. The learned judge upheld the preliminary objection and held that therefore the Industrial Court had no jurisdiction to hear the dispute. The appellant appealed.

Held: (1) what matters is whether the Minister has the power to refer the dispute to the Industrial Court, not whether or not the right section had been cited in his letter of reference. The Minister has power to make the reference under section 23 of the Industrial Relations Act, 1967, and the fact that the letter mentioned a wrong section under which he purported to act, did not effect the validity of the reference;

(2) the matter should be remitted to the High Court for it to deal with the original motion on the basis that the Minister's reference was valid and that the Industrial Court was vested with jurisdiction to hear and determine the dispute.

The following authorities were cited in argument:

(1) *Kenderaan Bas Mara* v. *Yew Bon Tew* [1980] 1 M.L.J. 311, 312, 313.

(2) *Free Lanka Insurance* v. *Ranasinghe* [1964] 1 All E.R. 457 (P.C.).

(3) *Director of Public Works* v. *Ho Po Sang* [1961] 2 All E.R. 721.

(4) *Chief Kofie Forfie* v. *Seifah* [1958] 1 All E.R. 289, 290.

(5) *Kannan* v. *Menteri Buruh & Tenaga Rakyat & Ors.* [1974] 1 M.L.J. 90.

(6) *P. Raman* v. *Chairman, Board of Governors, SRJK. Gopeng & Anor.* [1973] 2 M.L.J. 161.

FEDERAL COURT.

D.P. Xavier for the appellant.

V.T. Nathan for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): The appellant, a trainee conductor employed by the respondent company, was dismissed with effect from March 20, 1975. He made representations to the Minister of Labour and Manpower under section 16A of the Industrial Relations Act, No. 35 of 1967. The Minister set in motion the machinery under the section, and as no settlement was reached, on August 29, 1975, referred the matter to the Industrial Court, under subsection (9) of the section.

Section 16A provides as follows:

"(1) Where a workman considers that he has been dismissed without just cause or excuse by his employer, . . . he may, within one month of such dismissal, make representations in writing to the Minister to be reinstated in his former employment.

(2) The Minister may, before making a decision on any such representations, request the Commissioner to enquire into the dismissal and report whether in his opinion the dismissal is without just cause or excuse, and in such an enquiry the workman may be represented by his trade union.

(9) Notwithstanding the provisions of the foregoing subsections, the Minister may of his own motion if he is satisfied that it is expedient so to do or on the joint request of the trade union representing the workman and his employer or his trade union refer any dismissal to the [Industrial] Court for settlement."

In due course the Industrial Court directed that the appellant be reinstated with effect from November 1, 1977.

The company did not reinstate him, and so he complained to the Industrial Court of the non-compliance under section 56 of the Act. On March 11, 1978 the Industrial Court heard the complaint and again directed reinstatement. And on the same day the company applied for leave for an order of *certiorari* in the High Court to quash the award of the Industrial Court. Leave was granted and the substantive motion was heard by Vohrah J. on April 5, 1979. Then for the first time the company raised a preliminary point — the point being that since section 16A had been repealed by the Industrial Relations (Amendment) Act, 1975, Act A299/75, effective from August 1, 1975, (see P.U.(B) 292 of July 17, 1975), it was no longer effective on August 29, 1975, the date the matter was referred by the Minister to the Industrial Court; and that it not being disputed that the Industrial Court was clothed with jurisdiction if and only if there had been a proper reference to it by the Minister, the Industrial Court therefore had no jurisdiction to determine this dispute, and it followed that the award purporting to reinstate the appellant was null and void. The learned judge agreed and upheld the preliminary objection. It is against that decision that this appeal has been brought.

The sole issue here is, did the Industrial Court have jurisdiction to determine this dispute?

The company contends that the court did not, because the letter written on behalf of the Minister to the court mentioned section 16A as the authority under which he made the reference, a provision which was then no longer in existence — a contention with which, as we have seen, the learned judge agreed. The appellant on the other hand contends that the real question is not whether or not the Minister had